

MILITARY COURTS  
CHIEF JUSTICE

DRAWER 9A

COMMANDER-11-CHIEF

71.2009 DEC 54335



# Abraham Lincoln as Commander-in-Chief

## Chief Justice of Military Courts

Excerpts from newspapers and other sources

From the files of the  
Lincoln Financial Foundation Collection



# LINCOLN LORE

Bulletin of the Lincoln National Life Foundation - - - - - Dr. Louis A. Warren, Editor  
Published each week by The Lincoln National Life Insurance Company, Fort Wayne, Indiana

Number 740

FORT WAYNE, INDIANA

June 14, 1943

## ABRAHAM LINCOLN AS A CHIEF JUSTICE OF MILITARY COURTS

There have been many speculations as to what Abraham Lincoln could have done to render the best service to the country if he had survived his Presidential years. While he seemed to have some notion of returning to Springfield to practice law, it is rather doubtful if an insistent public would have allowed him ever again to assume the role of a private citizen.

On February 11, 1911, President Taft addressed a dinner group of the Lincoln Centennial Association, at Springfield, Illinois. In the course of his remarks, he commented on "Lincoln's intellectual honesty," from which he drew this conclusion:

"I can not pass this distinguishing and most remarkable trait in his character without saying that in my opinion Lincoln would have made as great a Chief Justice as he made a President. But in the crisis in the nation's history through which he lived, the quality was more necessary even in the executive than in the judicial branch of the Government."

Taft further commented on Lincoln's qualifications to grace the Supreme Bench with this statement. "This judicial attitude on every matter gave him clearness of perception and enabled him to judge other men and their probable actions with the certainty of a seer."

Inasmuch as Taft himself was to pass from the Presidency to the honorable office of Chief Justice, it is with some degree of interest that we observe his reaction toward Lincoln's qualifications to serve on the Supreme Court Bench.

Lincoln probably would have felt more at home on the Bench than he did at the head of the military forces of the nation. However, he served as a sort of a Chief Justice for the military courts which functioned during the war effort.

One of the most grievous types of correction which was removed early in Lincoln's administrations was "the inflicting of corporal punishment by stripes or lashes." According to the *Revised U. S. Army Regulations, 1863*, "Flogging was totally abolished by, Sec. 3 of Chap. 54, 5 August, 1861."

The death sentence which seemed to be the favorite verdict of military courts was not allowed to be executed until Lincoln himself had an opportunity to look over the evidence, and by his close scrutiny of the proceedings, the lives of many soldiers, both North and South, were saved.

Lincoln was always reluctant to confirm a death sentence of a military court if there had been any carelessness shown in the proceedings, as is evident from one of Stanton's orders, evidently dictated by Lincoln: "In a proceeding involving life such irregularities are wholly inexcusable, and make the execution of the death sentence legally impossible. The President directs that the prisoner \_\_\_\_\_ be released from arrest." (General Orders No. 227, War Dept. 8-1-63).

The death sentence was most abused with respect to men in the Confederate uniform, captured behind the lines, and the President had this order issued:

"In every case of prisoners taken in arms against the United States, who may be tried and sentenced to death, the record of the tribunal before which the trial was held, will be forwarded for the action of the President of the United States without whose orders no such sentence in

such cases will be executed." (General Orders No. 71, War Dept., June 21, 1862.)

If there were absolute proof that prisoners were spies, Lincoln did not hesitate to confirm the death sentence, as he did on one order condemning two spies to death. In many instances men designated as spies were nothing more than prisoners of war and Lincoln demanded that they be treated as such. In one case when a prisoner was condemned to be shot, the President's findings concluded, "The record gives no proof that the accused was a spy."

Sleeping at the post was another crime, with a possible death penalty attached, which Lincoln refused to confirm unless there was evidence that some disaster came from negligence. Much has been said about his countermanding the order which called for the death of William Scott, of the 3rd Vermont Volunteers. A stone marker has been erected near Scott's home in Vermont calling attention to the fact that Scott was *Pardoned by Abraham Lincoln*. This stone might serve as a monument to many sleepy boys saved by the President.

A Sergeant was accused of striking a superior officer and using threatening language to him, which called for the death penalty. It was a bad case, yet Lincoln was reluctant to confirm the decree of the military court that the Sergeant "be shot to death with musketry," but wrote out this special order on April 28, 1863, which bears the President's signature:

"The sentence of death in this case is commuted to imprisonment at hard labor, with ball and chain attached to his leg, during the remainder of the present war, all to be at Fort Delaware.

"A. Lincoln."

A soldier in Company A, of the 51st Pennsylvania Volunteers was before the court, and it was charged that he "did shamefully abandon his colors in the face of the enemy." The court sentenced him "to be shot to death with musketry." A further record of the case states that the papers in this case had been "forwarded for the action of the President of the United States, who approved the sentence to be shot to death and directed that it be carried into execution."

There were many crimes committed which called for the death penalty where Lincoln did confirm the findings of the military court. The charge of "being a guerrilla" when sustained by evidence, the court's demand for the supreme penalty was not disturbed. Any act committed in the face of the enemy that jeopardized the lives of others was immediately looked upon as deserving of the death penalty. (General Orders, No. 243, War Department, July 28, 1863.)

After having carefully read more than a thousand orders which passed through Lincoln's hand during the one year, 1863, one is convinced that no single case was carelessly considered, but that each one was given the attention of Lincoln's judicial mind, coupled with his honest opinion as to what verdict would in the end contribute most to the war effort. A private was not discharged if his services could be of value, and an officer was not humiliated if the President felt that the government was receiving his best effort. It is hoped that some day there may be available a study of Abraham Lincoln in his capacity as military Chief Justice.

